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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/921,543
Filing Date: August 02, 2001
Appellant(s): VIGUE ET AL.

Kevin J. Zilka
Reg. No. 41,429
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 26, 2006 appealing from the Office
action mailed June 24, 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

As indicated in the advisory action dated 8/17/2005, as well as the Status of Amendments After Final provided by the appellant on 1/26/2006, the amended claims presented 8/03/2005 have been entered and the rejection of claims 13-14 under 35 U.S.C. 112 2nd Paragraph was withdrawn, as indicated in the advisory action dated 8/17/2005.

The remaining grounds of rejection indicated by the appellant are correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-7, 15, and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peng (US Patent Number 6,317,754), and further in view of Delaney et al. (US Patent Number 6,374,289) hereinafter referred to as Delaney.

Regarding claim 1, Peng disclosed a method for securely sharing resources over a peer-to-peer network (See Peng Col. 2 Lines 50-67), comprising: broadcasting a request by a requesting peer for a resource over the peer-to-peer network wherein the request contains an identification of the resource and the resource identification contains a resource version identifier (See Peng Fig. 7 and Cols. 5-6 steps 1 and 3); receiving a response from a responding peer on the peer-to-peer network indicating that the responding peer has the requested resource (See Peng Col. 5 Step 2); retrieving the requested resource from the responding peer (See Peng Col. 6 Step 4); and verifying the retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein (See Peng Col. 6 Step 6a), however, Peng failed to disclose the broadcasted request being broadcasted to a plurality of peers.

Delaney teaches that in a server based system, downloading all data from one server can overwhelm the server (See Delaney Col. 1 Lines 26-35). Delaney further teaches a system in which a broadcast request for data is sent to a plurality of peers and one peer that has the

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requested data responds to the request (See Delaney Col. 7 Line 10 – Col. 8 Line 20 and Fig. 2B).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Delaney in the synchronization system of Peng by broadcasting the request for each object to a plurality of peers and receiving the requested object from one of the peers. This would have been obvious because the ordinary person skilled in the art would have been motivated to protect the servers from being overwhelmed by download requests.

Regarding claim 4, the combination of Peng and Delaney disclosed installing said resource (See Peng Col. 6 Step 6b, and Col 15 Step 9).

Regarding claim 5, the combination of Peng and Delaney disclosed retrieving a catalog containing a listing of resources (See Peng Col. 5 Step 2).

Regarding claim 6, the combination of Peng and Delaney disclosed comparing the listing of resources with resources installed at the requesting peer to determine which resources are to be requested over the peer-to- peer network (See Peng Cols. 5-6 Step 3).

Regarding claim 7, the combination of Peng and Delaney disclosed requesting each resource to be requested in a separate transaction such that each resource to be requested may be retrieved from a same or different responding peer (See Delaney Col. 7 Lines 13-18).

Regarding claim 15, the combination of Peng and Delaney disclosed a computer program product for securely sharing resources over a peer-to- peer network (See Peng Col. 9 Lines 39-42), comprising: computer code that broadcasts a single request to a plurality of peers by a requesting peer for a resource over the peer-to-peer network wherein the request contains an

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identification of the resource and the resource identification contains a resource version identifier; computer code that receives a response from a responding peer on the peer-to-peer network indicating that the responding peer has the requested resource; computer code that retrieves the requested resource from the responding peer; computer code that verifies the retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein; and a computer readable medium that stores said computer codes (See the rejection of claim 1 above and further it was inherent that the application was comprised in a computer readable medium in order for the code to have been executed and for the system to have operated).

Regarding claim 18, the combination of Peng and Delaney disclosed computer code that installs said resource (See the rejection of claim 4 above).

Regarding claim 19, the combination of Peng and Delaney disclosed computer code that retrieves a catalog containing a listing of resources (See the rejection of claim 5 above).

Regarding claim 20, the combination of Peng and Delaney disclosed computer code that compares the listing of resources with resources installed at the requesting peer to determine which resources are to be requested over the peer-to-peer network (See the rejection of claim 6 above).

Regarding claim 21, the combination of Peng and Delaney disclosed computer code that requests each resource to be requested in a separate transaction such that each resource to be requested may be retrieved from a same or different responding peer (See the rejection of claim 7 above).

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Regarding claim 22, the combination of Peng and Delaney disclosed that the responding peer scans a list of local aliased copies to determine if the responding peer has a local version of the requested resource (See Delaney Col. 7 Lines 26-39).

Regarding claim 23-24, the combination of Peng and Delaney disclosed that the responding peer waits a predetermined randomly generated period of time before responding that the responding resource has the requested resource (See Delaney Col. 7 Lines 26-39).

Regarding claim 25, the combination of Peng and Delaney disclosed that after receiving the response, the requesting peer broadcasts a message to the plurality of peers that the requested resource has been found (See Delaney Col. 10 Lines 26-35).

Claims 2, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Peng and Delaney as applied to claims 1, and 15 above, and further in view of Shostack et al. (US Patent Number 6,298,445) hereinafter referred to as Shostack.

Peng and Delaney disclosed verifying the received updates (See the rejection of claim 1 above), but failed to disclose verifying a digital signature of the update.

Shostack teaches an updating system should verify the integrity of updates by checking a digital signature of the update upon receipt of the update and prior to installing the update (See Shostack Fig. 4A Step 110, Fig. 7 and Col. 10 Line 58 – Col. 11 Line 4).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Shostack in the updating system of Peng and Delaney by verifying a digital signature of each update after receipt and prior to installing the update. This would have been obvious because the ordinary person skilled in the art would have been

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motivated to protect the recipient from update files that had been maliciously tampered with, as well as to prevent security vulnerabilities in the recipient.

Claims 3, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Peng, Delaney, and Shostack as applied to claims 2, and 16 above, and further in view of Verisign (Verisign gets US approval for 128-bit key certificates export).

Peng, Delaney, and Shostack disclosed verifying a digital signature of an update file (See rejection of claim 2 above), but failed to disclose the digital signature being a 1024-bit Verisign digital signature.

Verisign teaches that a 1024-bit Verisign digital signature provides digital signatures for today's strongest cryptographic technologies (See Verisign Page 2 Lines 22-25).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Verisign in the updating system of Peng, Delaney and Shostack by using a 1024-bit Verisign digital signature for verifying the updates. This would have been obvious because the ordinary person skilled in the art would have been motivated to provide the best security for the updates.

Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radatti (US Patent Application Publication 2002/0170052), and further in view of Delaney.

Regarding claim 8, Radatti disclosed a product updating service for automatic and secure updating of a product installed at a node of a network (See Radatti Abstract), comprising: automatically downloading a catalog containing a current listing of resources for the product at a predetermined time (See Radatti Paragraphs 0013, 0036, and 0038-0044, and 0053 and 0092), each resource being identified by a resource version identifier (See Radatti Paragraph 0041);

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comparing the listing of resources in the catalog with resources installed at the node to determine which resources are to be requested over the network (See Radatti Paragraphs 0068 and 0094); requesting each resource to be requested in a separate transaction over the network (See Radatti Paragraphs 0069 and 0094 and Fig 2), retrieving each resource to be requested in the network and the Internet (See Radatti Paragraph 0069 and Fig. 2); and verifying each retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein (See Radatti Paragraph 0093-0094), however, Radatti failed to disclose broadcasting the request for code over a peer-to-peer network and receiving the code from a member of the peer-to-peer network.

Delaney teaches that in a server based system, downloading all data from one server can overwhelm the server (See Delaney Col. 1 Lines 26-35). Delaney further teaches a system in which a broadcast request for data is sent to a plurality of peers and one peer that has the requested data responds to the request (See Delaney Col. 7 Line 10 – Col. 8 Line 20 and Fig. 2B).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Delaney in the product updating system of Radatti by broadcasting the request for code to a plurality of peers and receiving the requested code from one of the peers. This would have been obvious because the ordinary person skilled in the art would have been motivated to protect the servers from being overwhelmed by download requests.

Regarding claim 11, the combination of Radatti and Delaney disclosed installing each of the retrieved resources (See Radatti Paragraphs 0069-0070).

Claims 9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Radatti and Delaney as applied to claim 8 above, and further in view of Shostack.

Radatti and Delaney disclosed verifying the received code (See the rejection of claim 8 above), but failed to disclose verifying a digital signature of the code.

Shostack teaches an updating system should verify the integrity of updates by checking a digital signature of the update upon receipt of the update and prior to installing the update (See Shostack Fig. 4A Step 110, Fig. 7 and Col. 10 Line 58 – Col. 11 Line 4).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Shostack in the updating system of Radatti and Delaney by verifying a digital signature of each update after receipt and prior to installing the update. This would have been obvious because the ordinary person skilled in the art would have been motivated to protect the recipient from update files that had been maliciously tampered with, as well as to prevent security vulnerabilities in the recipient.

Claims 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Radatti, Delaney, and Shostack as applied to claims 9, and 13 above, and further in view of Verisign.

Radatti, Delaney, and Shostack disclosed verifying a digital signature of an update code (See rejection of claim 9 above), but failed to disclose the digital signature being a 1024-bit Verisign digital signature.

Verisign teaches that a 1024-bit Verisign digital signature provides digital signatures for today's strongest cryptographic technologies (See Verisign Page 2 Lines 22-25).

It would have been obvious to the ordinary person skilled in the art at the time of invention to employ the teachings of Verisign in the updating system of Radatti, Delaney, and Shostack by using a 1024-bit Verisign digital signature for verifying the updates. This would have been obvious because the ordinary person skilled in the art would have been motivated to provide the best security for the updates.

(10) Response to Argument

Issue #1

Because there are no intervening references relied upon in the present application, the lack of support under 35 U.S.C. 112 for claims 2-3, 9-10, 13-14, and 16-17 has been withdrawn.

Issue #2

The rejection of claims 13-14 under 35 U.S.C. 112 2nd Paragraph was previously withdrawn in the advisory action dated 8/17/2005.

Issue #3

Group #1: Claims 1 and 15

The appellant argues that Peng and Delaney are *non-analogous art* and therefore combining the references would not have been obvious. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In this case, very specifically, Peng is

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related to synchronizing servers, and Delaney is related to distributing data packages. However, in general, both Peng and Delaney belong to the analogous art of data transfer to a device. Peng involves transferring data objects to one device from another (See Peng Col. 6 Step 4). Delaney involves transferring data objects to one device from a plurality of devices (See Delaney Col. 7 Line 10 – Col. 8 Line 20 and Fig. 2B). As such, both references belong to the analogous art of transferring data objects to a device. The differences between the references do not render them as non-analogous art. The appellants assertion that Peng is not related to the art of distributing data packages is incorrect as Peng clearly discloses distributing data packages from one device to another in Col. 6 Lines 18-21, “If the identifier of an object appears in the list of identifiers received from the first server, it is sent to the first server whole.” Furthermore, as pointed out in the rejection of claim 1, Delaney recognized that when data is only distributed from one server the server can become overloaded and proposed a solution involving peer-to-peer distribution. This can be seen in Delaney Col. 1 Lines 16-35 and Col. 7 Paragraph 2. Therefore, the examiner respectfully disagrees with the appellants stance.

The appellant argues that “synchronizing servers does not allow for specific requests/broadcasts to be made”. This in fact is not the case as Peng clearly provides specific requests from a first server to a second server in the form of identifiers representing objects which need to be updated in the first server, as can be seen in Peng Cols. 5-6 Step 3 and especially step 3c. By sending these identifiers to the second server, the first server is requesting the updated objects from the second server.

The appellant argues that Peng did not disclose “verifying the retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein”. Peng clearly

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disclosed comparing the version identifier of the received object to the requested version identifier in col. 6 Section 6a and acting when they were equal. "If the received object or update has a version vector or time stamp older than or equal to the version vector of the corresponding object in the first server, ...". The version vector of the corresponding object in the first server was the version vector in the request (See Peng Col. 5 Step 1). The claim language does not specify what action is taken in response to the verifying that the received resource contains the same version identifier as the request, but instead merely recites verifying that the identifier is embedded in the retrieved resource. As explained above, Peng does check (verify) that the version vector in the request matches the version vector in the received object, and therefore the examiner believes that this portion of Peng meets this limitation of the claim and therefore respectfully disagrees with the appellant's argument.

The appellant argues that Peng "compares version vectors two times". The examiner is unsure what this argument is meant to show as there is no limitation stating that the version vectors cannot be compared multiple times.

The appellant argues that Peng does not verify that the "received resource has the **originally requested version identifier** embedded therein". In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., "originally requested version identifier") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Simply because the claim language recites the request containing a version identifier does not limit the scope of the claim such that the claimed

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version identifier must identify a specific requested version. The claim limitation simply requires a version identifier to be included in the request. Peng disclosed such a request in Cols. 5-6 and therefore meets the limitation of the claim.

The appellant argues that Peng does not disclose verifying that a specifically requested resource is in fact the same resource received. Once again, in response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., "verifying that a specifically requested resource is in fact the same resource received") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims recite ensuring that the received resource contains the same version identifier as the request. There is no language limiting the scope to verifying that a specifically requested resource is in fact the same resource received. Only a broadly claimed limitation of verifying the received resource is provided in the claim and no claim language is directed towards ensuring that the received resource is the same as a specifically requested resource.

Group #2: Claims 6 and 20

The appellant argues that Peng did not disclose "determin[ing] which resources are to be requested over the peer-to-peer network". The examiner pointed to Step 3 of Peng in Cols. 5-6 when addressing this limitation because in Step 3 of Peng the first server determines which resources will be requested. In the combination of Peng and Delaney, as presented in the rejection dated 6/24/2005, the request is broadcast to a peer-to-peer network, as taught by Delaney.

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The appellant argues that the examiner pointed to Radatti when addressing this particular argument in the advisory action dated 8/17/2005. However this is not the case. It is clearly seen that this particular argument, with regards to Peng not disclosing “determine[ing] which resources are to be requested over the peer-to-peer network”, was addressed by the examiner on page 2 Lines 40-43, wherein the examiner pointed out the arguments against the references individually, when the rejection was based on a combination of references, was not found persuasive.

Group #3: Claims 7 and 21

The appellant argues that Delaney teaches away from sending out individual requests for each resource when stating that “[o]ptionally and preferably, if more than one data package is desired, a list of requested data packages is included in the request message rather than a single MD5 digest, in order to reduce the total number of request messages on the network” (see Col. 7 lines 22-25). The examiner points out a key word in this cited portion of Delaney, “Optionally”. Delaney makes no requirement that a list be sent out, but rather states that it is optional. This is not teaching away from a sending out individual responses, but instead it is merely disclosing one preferred embodiment. Therefore, in the combination it is obvious that sending a list instead of an individual request is optional, and therefore the combination meets the limitations of the claim language.

Issue #4

Group #1: Claims 2 and 16

The appellant relies on the arguments with respect to Issue #3, Group #1, which have already been addressed above and will not be further addressed below.

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Issue #5

Group #1: Claims 3 and 17

The appellant relies on the arguments with respect to Issue #3, Group #1, which have already been addressed above and will not be further addressed below.

Issue #6

Group #1: Claims 8 and 11

The appellant argues that Radatti did not disclose “verifying each retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein”. Appellant further argues that Radatti Paragraph [0003] (should read [0093]) merely teaches verification of file integrity using hashes. The examiner agrees that [0093] discloses that a hash of a file is compared with hash in appropriate server software product information in order to determine the integrity of the file. In other words, in order to ensure that a file contains everything it was meant to contain (i.e. version number for a module as in paragraphs 0084-0088), the hash of the file is compared to a previously generated hash (in the server software product information) and if the hashes match it is determined that the file is not corrupt and contains all data it was meant to contain (i.e. version number for a module as in paragraphs 0084-0088). In the description of a module which was downloaded to the client from the server (See Paragraph 0087) a “hash of the module...will be used by update manager to verify that the module was not corrupted in transmission. The only description of how to use this hash for integrity purposes is in paragraph [0093]. As can be seen in the example of paragraph [0087] the version identifier is included in the module (“FROM 2.9 TO 3.0”). This version identifier (i.e. 3) is also found in the server “update_index” as shown in paragraphs [0083]-[0084] (See paragraphs [0038]-[0046] for a

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description of the formatting information of a record in the update_index). Because the hash of the module is verified, and the hash included the version identifier, the version identifier in the module was inherently verified. Because the version identifier of the module was included in the server update_index (catalog), the limitation of verifying the received resource by ensuring that the version identifier (that was also contained in the catalog) was embedded in the received resource (module) was disclosed by Radatti.

Issue #7

Group #1: Claims 9 and 13

The appellant relies on the arguments with respect to Issue #6, Group #1, which have already been addressed above and will not be further addressed below.

Issue #8

Group #1: Claims 10 and 14

The appellant relies on the arguments with respect to Issue #6, Group #1, which have already been addressed above and will not be further addressed below.

To summarize, the examiner has addressed the appellant's arguments:

As per Issue #1, the examiner has withdrawn the lack of support in the provisional applications.

As per Issue #2, the amendment which the appellant argues has not been entered was in fact entered on 8/17/2005.

As per Issue #3, the examiner has addressed the appellant's argument that Peng and Delaney are non-analogous art and has shown that in fact the opposite is true. The examiner

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showed that although Peng does involve synchronizing servers, Peng also disclosed sending requests for objects. The examiner showed that Peng did disclose verifying that the received resource contained the version identifier that was in the request. The examiner further commented on the appellant's remark regarding the comparison of the version identifier two times. The examiner also pointed out that neither an "originally requested version identifier", nor verifying that the received resource was the specifically requested resource, are not recited in the claim language. The examiner further showed that the combination of Peng and Delaney did show determining which resources would be requested over a peer-to-peer network, and the examiner addressed the allegation that Delaney teaches away from separate transactions.

As per Issue #4, the examiner has addressed the appellant's arguments with respect to Issue #3.

As per Issue #5, the examiner has addressed the appellant's arguments with respect to Issue #3.

As per Issue #6, the examiner has addressed the appellant's argument that Radatti did not verify that the version identifier was embedded in the received resource and showed that because Radatti verified the hash of the received module and the hash was taken over the entire module including the version number which was embedded by the server, Radatti did in fact verify that the version identifier was embedded in the received module.

As per Issue #7, the examiner has addressed the appellant's arguments with respect to Issue #6.

As per Issue #8, the examiner has addressed the appellant's arguments with respect to Issue #6.

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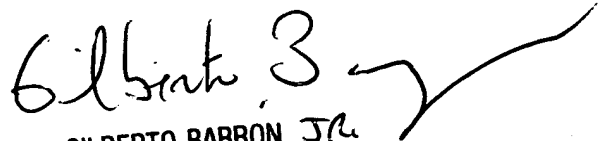
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Matthew Henning

March 22, 2006



GILBERTO BARRON JR.
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Conferees:

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Justin Darrow